

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

March 22, 2011

In the Matter of C. BUSH, Minor.

No. 300084

Dickinson Circuit Court

Family Division

LC No. 09-000501-NA

Before: GLEICHER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Respondent, the father of the involved minor child, appeals as of right from a trial court order terminating his parental rights pursuant to MCL 712A.19b(3)(b)(i), (g), (j), and (k)(iii). We affirm.

In March 2009, the infant child was diagnosed with multiple subdural hematomas and retinal hemorrhages, after his head circumference had rapidly expanded over a short time period. Pediatric medical specialists ruled out natural and accidental causes of the child's injuries, and concluded that the injuries stemmed from nonaccidental trauma, specifically, shaken baby syndrome. Respondent denied intentionally injuring the child and suggested that other events, like three instances in which the child accidentally fell from respondent's lap to the floor, might have caused the injuries.

The Department of Human Services (DHS) filed a petition in March 2009 seeking termination of respondent's parental rights. At trial, the DHS presented the testimony of several medical experts that subdural hematomas and retinal hemorrhages form a constellation of injuries associated with shaken baby syndrome. Although the child did not have an apparent neck injury, the DHS medical expert witnesses agreed that a baby's neck remains flexible enough to avoid injury from repetitive shaking. None of the medical expert witnesses called by the DHS believed that the incidents of minor trauma described by respondent would suffice to cause the subdural hematomas and retinal hemorrhages. In contrast, respondent's expert, Dr. John Plunkett, dismissed repetitive shaking as an injury mechanism that could cause a subdural hematoma. He cited studies purportedly establishing that a human could not possibly shake a baby rapidly and vigorously enough to cause a subdural hematoma. Dr. Plunkett also opined that repetitive shaking could cause a fatal neck injury, but not the injuries that the instant child presented. In rebuttal, Dr. Debra Simms, an expert on child abuse, testified that the studies on which Dr. Plunkett relied involved experiments on cadavers, animals, and mechanical crash dummies, and that their results could not be extrapolated to human babies. Following several

days of proceedings, the trial court authored a comprehensive and thoughtful opinion and order terminating respondent's parental rights. The court gave credence to the DHS experts and found that respondent had physically abused the child. The court concluded that the evidence warranted termination of respondent's parental rights under MCL 712A.19b(3)(b)(i), (g), (j), and (k)(iii). The court additionally found that termination of respondent's parental rights served the child's best interests.

Respondent now complains that the trial court erred in finding sufficient evidence supporting each of the statutory grounds for termination, and also erroneously evaluated the child's best interests. A trial court may terminate a respondent's parental rights if clear and convincing evidence proves one or more of the statutory grounds listed in MCL 712A.19b(3). Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds that termination serves the child's best interests. MCL 712A.19b(5). "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest" under MCL 712A.19b(5). *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); see also MCR 3.977(K). "A finding is 'clearly erroneous' if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (internal quotation omitted). This Court gives deference to the trial court's special opportunity to observe and judge the credibility of witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The evidence in this case showed that respondent primarily cared for the child when the child's mother worked. The testimony of the DHS medical experts amply supports the trial court's finding that respondent physically abused the child by violently shaking him with enough force to cause subdural hematomas and retinal hemorrhages. That evidence, along with the evidence of respondent's violent history and commission of other acts of domestic violence, clearly and convincingly substantiate the trial court's determination that the DHS proved each of the statutory grounds for termination.

Contrary to respondent's contention, the trial court did not clearly err in finding the testimony of the DHS medical experts more credible and reliable than the testimony of respondent's expert, Dr. Plunkett. The trial court occupied a superior position to evaluate the credibility of the witnesses. *In re HRC*, 286 Mich App at 459. Furthermore, the trial court's credibility assessment in favor of the DHS medical experts gives rise to no inherent unreasonableness in light of their experience and expertise in treating pediatric patients, when compared to Dr. Plunkett's lack of similar experience. The record does not reflect that the trial court discounted Dr. Plunkett's testimony solely because of his history of testifying exclusively on behalf of persons accused of child abuse.

Respondent argues that the trial court erred in finding that it would be futile to offer him an opportunity to participate in rehabilitative services to remediate his parental deficiencies. Respondent also suggests that the court neglected to consider the testimony of witnesses who never saw him behave inappropriately with the child and the evidence that he took the child to the pediatrician when necessary. However, the trial court did not clearly err to the extent that it gave the evidence of respondent's abuse of the child greater weight than that showing his

performance of basic child care responsibilities. Considering the seriousness of the child's injuries and respondent's failure to acknowledge responsibility for those injuries, together with the other evidence of respondent's domestic violence, we detect no clear error in the trial court's finding of a reasonable likelihood that the child would suffer abuse if returned to respondent's care, and that no reasonable expectation existed that respondent could rectify his parenting deficiencies within a reasonable time.

Lastly, taking into account the severe physical abuse endured by the child, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ William C. Whitbeck
/s/ Donald S. Owens